

Application 10/597,935
Filed September 7, 2007
Office Action mailed September 17, 2007
Amendment dated March 17, 2010

REMARKS

Claims 24-49 are canceled without prejudice and are replaced with new claims 50-76, which are supported by the cancelled claims. The recitation of "a cancerous condition associated with an acidic microenvironment" in claims 51 and 61 is understood by one of skill in the art to refer to acidity that is caused by vacuolar type H⁺ ATPases in tumor cells, as discussed on pages 2 and 3 of this application. Such an acidic microenvironment is distinct from the general acidic environment produced by normal stomach cells and has previously been recognized, for example, as a potentially useful tool to distinguish tumor tissues from healthy ones (see first paragraph on page 2 of the specification). None of the amendments made herein constitute the addition of new matter.

The Rejections under 35 U.S.C. 101 and 35 U.S.C. 112, second paragraph

Claims 24-49 have been rejected under 35 U.S.C. 101 and 35 U.S.C. 112, second paragraph as being drawn to use claims, which are non-statutory process claims.

In the interest of advancing prosecution and without acquiescing to the rejection, Applicants have canceled the existing use claims and have presented new claims which are in the form of method and composition claims in accordance with United States practice. Method claims include a step of administering a therapeutic composition to a patient in need thereof, consistent with prior claim language.

It is believed that the amendments to the claims result in the presentation of statutory subject matter, and Applicants respectfully request the allowance of the claims.

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Conclusion

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are any outstanding issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This Amendment is accompanied by a Petition for Extension of Time (three months) and payment of the fee of \$1110 as required by 37 C.F.R 1.17. It is believed that the present amendment does not require the payment of any additional fees, pursuant to 37 C.F.R. 1.16-1.17. If this is incorrect, however, please charge any fees due under the foregoing Rules to Deposit Account No. 07-1969 and grant any additional extension of time, if needed.

Respectfully submitted,

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